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NO 85











IN SENATE OF THE UNITED STATES.

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JANUARY 14, 1835.

The following documents relating to *Spanish grants*, in Louisiana, between the Perdido and Mississippi, were laid on the table, by Mr. WAGGAMAN, (to accompany Senate bill No. 92,) were ordered to be printed.

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No 1.

*Exposition of the Florida Treaty, by Joseph M. White, Esq.*

The treaty of the 22d of February, 1819, between his Catholic Majesty and the United States was intended, as declared in the preamble attached to it, "to consolidate, on a permanent basis, friendship and good correspondence; and to settle and terminate all their differences and pretensions, by a treaty which shall designate, with precision, the limits of their respective bordering territories in North America."

One of these "differences," thus proposed to be terminated, was of deep interest, long standing, and protracted negotiation, relating to the boundaries between Louisiana and West Florida. The conflicting "pretension" of each power was to the jurisdiction and dominion of the territory lying between the Mississippi and Perdido rivers; and the object of this treaty, as recited, was to designate and settle this question of limits.

The controversy grew out of the extent of the Louisiana cession in 1803, after that colony was ceded by his Catholic Majesty, in a secret treaty of San Ildefonso, dated the 1st of October, 1800, to the French republic; and after the delivery of the province, by the Spanish commissioners Don Manuel Salcedo and the Marquis of Casa Calvo to the French prefect Lausat, and by him, under the subsequent cession of 1803, with the same designated limits, to the United States, the latter set up a claim to all the territory east of the Mississippi, as far as the Perdido. This district of country was neither delivered by Spain to France, nor by France to the United States, as a part of the Louisiana cession. The colony of Louisiana was quietly considered and accepted by the authorities of all three Governments, with the limits designated in the act of delivery, without exception, qualification, or protest. Spain remained in possession of West Florida, being all the country east of the Mississippi river, and the island of New Orleans, which was neither ceded nor delivered to France by the stipulations of the treaty of San Ildefonso, nor by the latter to the United States.

In 1804 the Government of the United States set up a sort of equivocal title to the territory in question, in which they had so little confidence, that, upon the first protest of Spain, they so construed their law as to abandon the right to establish a custom house at Mobile.

In 1805 they created an extraordinary mission to Madrid, to negotiate on the subject, which negotiation resulted in an entire failure. France and Spain both maintained that this territory was no part of the colony of Loui-

siana. Our negotiators having failed at Aranjuez, in 1805, to satisfy either Don Pedro Cevallos or his Government, or to convince Prince Talleyrand, or the First Consul, that there was any justice in their pretension, set on foot, in the year 1809, a secret negotiation with the local authorities, to induce them to surrender the province of their royal master. This also failed, and they then stimulated an insurrection in the province, and took possession of it, avowedly to put down the rebellion, and to hold the territory subject to future negotiations.

A proclamation was issued in 1810, stating in the preamble the confidence the Government of the United States had in their title, and that they would take possession of the same, with the explicit declaration that "it will not cease to be a subject of fair and friendly negotiation and adjustment."

The Spanish authorities remained in possession of this territory from 1803 up to 1810, exercising all the rights of jurisdiction and dominion; and granted about one out of the ten millions of acres of land. The government, *de facto*, during the seven years, is a fact which will not and cannot be questioned.

Spain, at the time of this proclamation, was desolated by Napoleon's army, and his Catholic Majesty in duress. I say nothing of the *time* selected to seize upon this province. It was alleged to be held subject to negotiation, but very soon partitioned out.

In all the correspondence between the two Governments, from 1810 to 1819, Spain solemnly protested against that construction of the Louisiana treaty, both at Madrid and at Washington. (See the correspondence annexed hereto.)

The treaty of 1819 terminated the controversy between the two Governments, and definitively settled the question of jurisdiction and sovereignty.

The second article is in these words, upon the English side: "His Catholic Majesty cedes to the United States, in full property and sovereignty, all the territories which belong to him, situated to the eastward of the Mississippi, known by the name of East and West Florida." The Spanish side is more emphatic: "Todos los Territorios que le pertenecen situados al este del Mississippi, conocidos bajo el nombre de Florida occidental y Florida oriental," known under *the name of West Florida*; thus designating a territory known under the name of West Florida and East Florida. It will be observed that this was the cession of territories *not* east of Perdido, but *east* of the Mississippi.

The confirmatory article is coextensive with the article of cession. It provides that all claims in "the *ceded* territories shall remain ratified and confirmed." The treaty, it has been said, terminated the political question between the two nations. The subordinate question arising between the individual grantees, under titles made by the legitimate authorities of the crown of Spain, between the years 1803 and 1810, whilst Spain remained in possession of this territory, is now presented for consideration and decision.

If the United States had recognized these titles, as it is believed was the understanding of the contracting parties, it would have prevented the development in these papers, which for many reasons should have been avoided. These claims have not been admitted as yet by the United States, and these claimants are obliged to present the question for the legislative and judicial departments of the Government.

If the territory lying between the Mississippi and Perdido rivers was in fact ceded as a part of the colony of Louisiana, then Spain had no right to



grant any portion of it subsequent to the date of that treaty in 1803. If, on the other hand, the United States did not acquire the territory until the Florida treaty, then Spain had a right to grant the lands between the years 1803 and 1810. The United States, prior to the conclusion of the treaty of 1819, had no other knowledge of the contents of the treaty of San Ildefonso than that part of it quoted in the Louisiana treaty. The whole of that treaty is hereto annexed, and marked A. Taken in conjunction with the other public papers, never before published in this country, marked B, it will explain the object of the contending parties. Prior to 1762, the respective rights of Great Britain, Spain, and France were but little understood, either in Europe or in this country. Each power set up the most exorbitant pretensions to territory, founded upon the uncertain and indefinite title of discovery.

It was the object of the treaties of 1762 and '3 to settle their pretensions to colonial aggrandizement. In the absence of these papers, which distinctly explain the understanding of all the parties as to the precise limits of Louisiana and West Florida, the United States have endeavored to establish some claim, founded upon this uncertain source of title, to be established by reference to vague maps and unauthenticated speculations of geographers.

It is not deemed necessary to go into these questions. It is enough to establish the fact, that in the year 1762 all the territory west of the Mississippi, including the island of New Orleans, was called the colony of Louisiana; and all the territory east of that river and the island was called West Florida. France ceded Louisiana to Spain, and West Florida to England. France, however, remained in *possession* of Louisiana until 1769. The formal delivery of Louisiana was made on the 21st of April, 1764, but Spain could not get possession or exercise jurisdiction until 1769.

The third article of the treaty of San Ildefonso provides that his Catholic Majesty engages to "recede the colony or province of Louisiana, with the same extent it *now* has in the lands of Spain, and had while in the possession of France." What was once Louisiana became two colonies in 1762, under different names, transferred to different powers. The two colonies, by conquest and treaty, again came under the dominion of Spain, but they preserved their separate names and separate Governments.

Louisiana, as it "is now in the hands of Spain," i. e. in 1800, was not as France possessed it prior to 1762. The name and Government of West Florida must have been extinguished, and the territory reannexed to the colony as it then was. France had possessed this colony from 1762 to 1764, before Spain signified her acceptance of it, and until 1769, before Spain got quiet possession of it. His Catholic Majesty receded the province of Louisiana. It is a perversion of terms to say a recession of a province will include another province never ceded by the grantor, but taken by conquest from another power. We have in these papers the clear, unsophisticated understanding of France and Spain. It is apparent that Spain did not intend, and did not in fact cede to France any portion of territory east of the Mississippi in the year 1800. It is shown that France did not receive or claim any portion of this territory under that treaty, but subsequent to its date proposed a distinct treaty to acquire it. France could only transfer what she had acquired, and no more.

The negotiation of the treaty on the part of France was confided to Monsieur Bartè Marlois, who was instructed to consult Prince Talleyrand. The

map of Monsieur Marlois shows the extent of the cession, as understood by himself and the ministers of the United States. There are numerous maps, histories, papers, and documents going to establish this view of the subject. It is unnecessary to refer to them. It is too clear for argument. The United States never had a legitimate claim to this territory until 1819. The question then arises as to the titles to be confirmed within the ceded territories. This requires an examination into the principles of international law applicable to the construction of this treaty. I have said that by the treaty of the 22d of February, 1819, Spain ceded the Floridas to the United States.

The latter acquired these provinces and their appendages in full sovereignty, including all public grounds and edifices, and all vacant lands which were not private property.\*

It was stipulated between the high contracting parties, that all grants made by his Catholic Majesty, or his lawful authorities, before the 24th of January, 1818, in the ceded territory, should remain confirmed and acknowledged in the same manner as they would have been if the provinces had continued under the dominion of his Catholic Majesty.† Further time was given to proprietors who had been prevented from fulfilling the conditions of their grants, by the recent circumstances of the Spanish monarchy, and the revolutions in Europe.

The inhabitants of the ceded territory were protected in all their rights, and became citizens of the United States.‡

Congress has, from time to time, adopted various legislative provisions for the purpose of preserving the national faith, separating private property from the public domain, and securing the individual titles intended to be protected by the treaty.

Commissioners were appointed to examine land claims, with authority to confirm grants not exceeding a certain size, and to report those above that limit to Congress. When these commissions were dissolved, similar powers were vested in the register and receiver of the land offices. In some instances, an option was given to the holders of certain grants to select a league square within their respective concessions, upon condition of surrendering the residue by deed to the United States. Through these and other means, the titles of the smaller proprietors have, for the most part, been definitively adjusted, and the larger claims alone remain for settlement. These, Congress, by act of 23d May, 1828, authorized the courts of the territory to hear and determine, with an appeal to the Supreme Court of the United States. Several cases have been adjudicated in the courts below. Decisions have been pronounced, not easily reconcileable, if not at total variance with each other: appeals have been taken, and the questions discussed are now before this court, whose judgment is deeply interesting, not merely to the parties on the record, but to the numerous other suitors whose rights, or supposed rights, depend on similar principles.

One or two considerations of a general nature may here, it is presumed, be not inappropriately introduced. Those who represent the interests of the United States in some of the cases before the court have thought proper to assume, as one ground of defence, that the confirmation or rejection of these titles is matter essentially of executive or legislative cognizance, and ad-

\* Article 2d.

† Article 8th.

‡ Articles 5th and 6th.

dresses itself exclusively to their discretion. The question they urge is a political, not a judicial one, and is equally unfit to be submitted to, and incapable of being decided by, a court. Waiving all considerations of the hardship and mockery of referring claimants under a treaty to a tribunal incompetent to afford them redress, forbearing to touch on the indecorum of a construction which attributes to Congress an act of futile or deceptive legislation, it will be enough to say that this interpretation, it is believed, has been once considered and rejected.\*

The argument, indeed, amounts to little more than this—we have bound ourselves to do what Spain would have done. what that is, we know not; and having referred the question to those who cannot decide it, we will therefore do nothing. Perfidy often wears the mask of subtlety, as well from shame as cowardice; but it is seldom that the counsellors of bad faith, if they condescend to argue at all, are satisfied with a defence so feeble.

The act of Congress requires the court to examine and decide upon these claims in conformity with the law of nations, the treaty, and the laws of Spain.

It is proposed to consider the subject in reference to each of these several rules of decision.

#### First. THE LAW OF NATIONS.

It is conceived that, according to the mitigated rights of war, as now well understood and settled by international law, the lands of individuals are safe even after conquest:† much less can a cession, of itself, destroy private rights. Absolute or perfect grants, it is believed, would be protected by the law of nations, independent of the treaty. Some legislative recognition of their validity might indeed be necessary to sustain a suit upon them in our courts, but the national obligation to respect them could hardly be denied. It is in behalf of concessions or inchoate grants that the stipulations of the treaty were most requisite and important. To the acts of the Spanish government in this respect, not merely the authority of *res adjudicata*, such as belongs to all foreign sentences and decrees, was given by the treaty; its effect was to make binding on us all that would have been valid against Spain, and to oblige us to complete whatever she, in good faith, had begun, but left unfinished.

A detailed examination of the maxims of customary international law, as they would bear upon the rights of proprietors of land in Florida, is not called for in the presence of an express treaty stipulation; and, in referring to the law of nations as a rule of decision for the courts, Congress, perhaps, had more expressly in view such part of it as relates to the interpretation of treaties. This will be more conveniently considered under another head.

#### Secondly. THE TREATY.

This instrument, it is contended, should be most liberally construed. Its interpretation is to be sought in the motives and policy of the parties: in their words and in their acts. The leading objects of the United States were, to procure a more convenient and secure frontier; to command the Gulf of Mexico, the outlet of a large portion of their commerce; to obtain indemnity for their merchants, and to secure themselves against the annoyance they must naturally expect from Florida, in the hands of an enemy or a false or feeble neutral. It is notorious that, for more than a century, this territory had been a constant source of injury, jealousy, and vexation to the adjoining colonies and States. The colony of Georgia was founded as a bar-

\*Soulard's case, 4 Peters.

†Vattel, b. III. c. 13, sec. 200.

rier against the encroachments of the Spaniards; and the refuge and encouragement afforded by the latter to absconding slaves, hostile Indians, and other incendiaries, was a continued cause of complaint, from the settlement of Carolina to the Seminole campaign. In examining the interests and duties of the United States in connexion with this subject, it is not as landed proprietors alone that we must regard them. The rage for new settlements, indeed, makes this the chief point among the people, and greatly increases the prejudices against the large grants; but the court is far above the contagion of their example.

To consider the cession of Florida merely as a land-jobbing transaction, would be doing great injustice to the liberal and enlightened policy which sought this valuable acquisition, with steady calmness, through so long a course of evasion and delay. Yet its value, even in that point of view, is not unworthy of notice. Thirty-five millions and a half of acres, of which, up to the 30th of June, 1838, but little more than a million and a half had been granted or sold,\* will surely, after making a most liberal allowance for the satisfaction of unsettled land claims, more than refund to us the five millions paid to our own merchants. Computing but thirty millions at the minimum price to which it is proposed to reduce the refuse lands, the United States will receive back their principal from the soil, and obtain the sovereignty for nothing.

It is admitted that, in the cession of a province, the disposition of the inhabitants and their effects is a question of policy between the parties. To divest them of their rights of property is, however, in modern times, an unheard of cruelty. Usually the option is allowed them of becoming subjects of the new Government, or of selling their estates, and removing within a specified period. Such were the terms of cession of this very province from Spain to Britain in 1763, and from Britain to Spain twenty years afterwards. It will be borne in mind by the court that population rather than soil is the want of the United States; that their policy as to naturalization is as liberal as that which the wisest modern philosopher has praised in the greatest of the ancient republics; and that sovereignty, not soil, was the great motive for the acquisition.

Our Government, it may safely be affirmed, neither contemplated the expulsion of the ancient inhabitants, or any injury to their property. The terms held out in the treaty ceding Louisiana, as well as that by which Florida was acquired, show that the United States never intended to grasp a barren sceptre, and wave it over a dispeopled territory. The inhabitants were made citizens. The province was to become a State. Can it be imagined that any rational Government would act so unwisely as to receive into their society a large body of foreigners, endow them with civil rights and political power, and, after rendering them disaffected, by stripping them of their property, leave to these malcontents the protection of an extensive, important, and exposed frontier?

Many of the motives which must have operated on Spain are equally obvious. She naturally wished to extinguish demands, the justice of which had been admitted, while their satisfaction had been evaded until all the arts of procrastination were exhausted. She might desire to get rid of a useless and expensive appendage; and she must have foreseen that it would probably be wrested from her as an indemnity, if she trifled much longer with

\* Reports of Committees, H. R. No. 95, 2d session, 20th Congress.

our patience. But, in yielding up the inhabitants with the territory, she would naturally stipulate most favorably for the people she was about to surrender. She did not intend to sacrifice them. Their fidelity to her in every vicissitude, the temptations by which they had been assailed, the invasions to which they had been exposed, their sufferings, their constancy, their very helplessness, all pleaded powerfully in their favor.

In the 8th article, two parties were stipulating for the security and advantage of a third, whom both had the strongest reasons to cherish and protect. It is submitted, therefore, with some degree of confidence, that, so far as the motives and policy of the parties afford a key to the meaning of their words, the construction most favorable to the claimants is permitted to, nay, is enjoined upon the court.

Before proceeding to examine the language of the treaty, a few observations on the rules of interpretation may, perhaps, be pardoned. Jurists generally admit that all grants, contracts, and stipulations, are to be taken most strongly against the grantor.\* The words of the party promising are to be regarded rather than those of the party to whom the promise is made.† Other general rules are to be found in the works of the most esteemed publicists, and must be familiar to the court.‡ Among the rest, that interpretation which is drawn from the reason of the act is strongly and safely recommended.§ A special rule of construction has, moreover, been deduced from the character of the stipulation itself. Hence the distinction between things favorable and things odious—a distinction recognised by Grotius and Vattel.¶ The difference between the former and mere acts of liberality prejudicial to the sovereign, is illustrated by the last named author|| in such a manner as leaves no doubt to which class the provisions of the eighth article belong.

What, indeed, can be more clearly entitled to rank among things favorable, than engagements between nations securing the private property of faithful subjects, honestly acquired under a Government which is on the eve of relinquishing their allegiance, and confided to the pledged protection of that country which is about to receive them as citizens?

This brings us to the words of the treaty. There is a difference between the English and the Spanish versions of the eighth article. Both are equally originals, but surely the justice and liberality of the United States will extend to the claimants the full benefit of either. The first difference is in rendering "*concesiones de terrenos*" as "grants of land." *Concesiones*, it is apprehended, is a term much broader than *grants*, and comprehends all which we, in the technical language of our land laws, might call entries or warrants of survey or location. The substitution of *lawful*, in the English, for *legitimos*, in the Spanish, will be commented on in another place. The residue of the clause, that those grants *shall be* ratified and confirmed to the persons in possession of *the lands*, to the same extent that the same grants would be valid, &c., is by no means equivalent to the Spanish phraseology. The latter, fairly rendered, is to this effect: "All concessions of

\* Cooper's Justinian, in note 601.

† Vattel, b. II, c. 17, sec. 267.

‡ Grotius, b. II, ch. 16, p. 136. Vattel, b. II, c. 17, sec. 270.

§ Vattel, b. II, c. 17, sec. 287.

|| Grotius, b. II, c. 16, sec. 10, p. 148. Vattel, b. II, c. 17, sec. 300, 301, 303.

¶ Vattel, b. II, c. 17, sec. 310.

lands made by his Catholic Majesty, or by his legitimate authorities, before the 24th January, 1818, in the aforesaid territories, which his Majesty cedes to the United States, shall remain confirmed and acknowledged to the persons in possession of them, (i. e. the concessions,) in the same manner that they would have been if the dominion of his Catholic Majesty over these territories had continued."

The difference between declaring that these *grants shall be ratified and confirmed* to the persons in possession *of the lands*, to the *same extent* that the *same grants* would have been valid, &c., and saying that all *concessions* of land shall *remain confirmed and acknowledged* to the persons in possession *of them* (i. e. the title papers) in the *same manner that they would* have been, &c., is sufficiently obvious and important. The sense is materially different. The English side of the treaty leaves the ratification of the grants executory—*they shall be ratified*; the Spanish, *executed*—they shall *continue acknowledged* and confirmed, *quedaran ratificados*. *Quedan* signifies remain or continue, and in this sense is used in the last clause of the same article; *quedan anuladas y de ningun valor*, remain null and of no effect. In the English, possession refers to the *lands*; in the Spanish, to the *grants*. The relative *ellas* agrees with the antecedent *concesiones*; if it referred to *terrenos*, the relative would have been *ellos*. No word equivalent to recent is to be found in the Spanish.

It has been supposed, with little reason, that the eighth article might be interpreted to confer a discretion, rather than impose an obligation, on the American Government. It is one of the admitted rules of construction, that interpretations which lead to an absurdity, or render an act null, are to be avoided.\*

The King of Spain can annul a grant made by himself without any allegation of surprise or fraud, simply in virtue of his absolute will and sovereign power. It is too late for us to deny that position; we have recognised it by the treaty. The grants to Alagon, Vargas, and Puñon Rostro were annulled. By the treaty we succeeded to all the rights of Spain; the concessions made by Spain are to continue valid to the same extent, &c.; but will it be asserted that, in succeeding to the rights of Spain, we succeed to the right of his Catholic Majesty to annul the grants of his subjects? Can it be pretended that the provisions of the eighth article were designed only to leave all grants, perfect and inchoate, as completely at the mercy of the American Government as they had been at that of the Spanish monarch?

In attempting to ascertain the true meaning of the parties, it is humbly conceived we are not confined to the language of the treaty. We may look into the negotiations which preceded it. In this instance, there is a particular propriety in doing so. "As the instrument of ratification, an essential part of the whole treaty refers to the history of the negotiation; it lets in the whole of that history, as matter to be adverted to, according to all the strictness of legal argument in reasoning on the construction of the claim in question. The matter is thus made capable of being argued as if the question were upon an act of parliament, or private deed, reciting the circumstances under which it was obtained. One might, therefore, rest, as elucidating the case, upon all the authorities which establish, with respect to private and diplomatic instruments, that, however general and comprehensive particular expressions may be, they ought in their effect to be confined

\*Vattel, b. II, c. 17, sec. 282, 304.

to the particular object the parties had in view. The reports of the Court of Chancery in England contain a variety of instances as to the restriction of deeds, however widely expressed, to the particular object of the parties, founded on a review of the circumstances under which they were made. (Vide Chalmondly and Clinton.) It is also observed by Vattel (268) that we are to interpret a clause in the utmost latitude that the strict and appropriate meaning of the words will admit of, if it appears that the author had in view every thing which that strict and appropriate meaning comprehends; but we must interpret it in a more liberal sense when it appears probable that the author did not mean it to extend to every thing which the strict propriety of the terms might be made to include.”\*

A short sketch of the negotiations, with some brief extracts and references, will therefore be submitted. In January, 1818, the Government of the United States proposed to the Chevalier de Onis to terminate all differences on the following terms:

1. Spain to cede all territory eastward of the Mississippi.
2. The eastern boundary to be the Colorado.
3. Claims for indemnities to be referred to commissioners.
4. The lands in East Florida, and to the Perdido, to be held as security for the indemnities; but no grant subsequent to August 11, 1802, to be considered valid.

5. Spain to be released from the payment of the debts.†

On the 24th October, 1818, Don Luis de Onis proposes to cede the Floridas: “the donations or sales of land made by the Government of his majesty, or by legal authorities, until this time, are nevertheless to be valid.”‡

The Secretary of State replies, October 31, 1818, “Neither can the United States recognise as valid all the grants of land until this time, and at the same time renounce all their claims for indemnity.” He adverts to the notice given to the Government of Spain, that all the grants lately made within those territories (i. e. to Alagon, Vargas, &c.) must be cancelled, unless some other adequate fund should be provided to satisfy the claims of the United States and their citizens.§

De Onis rejoins, 10th November, 1818, “My second proposal has been admitted by your Government with this modification, that all grants and sales of land made by his Catholic Majesty, or by lawful Spanish authorities, in the Floridas, from the year 1802 to the present, shall be null and void. To this modification, in its absolute sense, I cannot consent, inasmuch as it is offensive to the dignity and imprescriptible rights of the crown of Spain, which, as the legitimate owner of both the Floridas, had a right to dispose of those lands as it pleased; and, further, as the said modification would be productive of incalculable injury to the bona fide possessors, who have acquired, settled, and improved those tracts of land.”¶

“The extent of what I can agree to is, that the late grants made by his Catholic Majesty in the Floridas, since the 24th of January last, the date of my first note, announcing his majesty’s willingness to cede them to the United States (the said grants having been made with a view to promote population, cultivation, and industry, and not with that of alienating them,)

\* MSS. Opinion of Sir John Joseph Dillen, on Rattenbury’s grant.

† Lyman’s Diplomacy United States; vol. 2; p. 133.

‡ 1 vol. Executive Papers; 1 sess. 16 Cong. 1819-’20; doc. 2; p. 25.

§ 1 vol. Executive Papers; 1 sess. 16 Cong. 1819-’20; doc. 2; p. 25.

shall be declared null and void, in consideration of the grantees not having complied with the essential condition of the cession, as has been the fact.”\*

On the 9th of February, 1819, the Minister of Spain submitted his project of a treaty. The ninth article, answering the eighth of the present treaty, is as follows:

“All grants of land made by his Catholic Majesty, or his legitimate authorities, in the aforesaid territories of the two Floridas, and others, which his majesty cedes to the United States, shall be confirmed and acknowledged as valid, excepting those grants which may have been made after the 24th of January last year, the date that the first proposals were made for the cession of those provinces, which shall be held null, in consideration of the grantees not having complied with the condition of the cession.”†

On the 13th of February, 1819, the American Secretary offered his counter project, in which the eighth article proposed stands thus:

“All grants of land made by or in the name of his Catholic Majesty in the aforesaid territories, after the 24th of January, 1818, shall be held null, the conditions of the said grants not having been performed by the grantees. All grants made before that date by his Catholic Majesty, or by his legitimate authorities in the said territories, the conditions of which shall have been performed by the grantees according to the tenor of their respective grants, and none other, shall be confirmed, and acknowledged as valid.”‡

In the minute or protocol of conferences preserved by M. Hyde de Neuville, whose good offices were interposed on this occasion, the following entry will be found:

“*Article eighth.* The article cannot be varied from what is contained in the Chevalier’s project, as the object of the last clause therein is merely to save the honor and dignity of the sovereignty of his Catholic Majesty.

“*Note of Mr. Adams thereon.* Agreed, with the following explanation; that all grants of land which shall not be annulled by this convention are valid to the same extent as they are binding on his Catholic Majesty.

“*Remarks of M. De Neuville.* The Secretary of State observed to me, that the Federal Government would, most assuredly, never entertain the idea of disturbing individuals who were vested with a *bona fide* title to their property; but, as a treaty ought not to cover fraudulent practices, so no more could be asked of the United States than could be offered by his Catholic Majesty; that, being in this case substituted for his majesty, they would scrupulously fulfil their engagements, but that more could not be expected of them.

“The Secretary of State even proposes, if M. De Onis wishes it, that the article shall be inserted in the treaty as proposed by the Minister of Spain, on condition that the above explanation shall be given in the form of a note. The Federal Government, unwilling to leave any thing in a state of doubt or uncertainty, only wish to place on the most secure footing whatever is just and honorable, and is at the same time perfectly satisfied that his Catholic majesty neither asks nor wishes more.”§

The eighth article was finally inserted as it at present stands, but doubts arising whether the recent large grants were effectually excluded by the

\* 1 vol. Ex. Papers, 1 sess. 16 Cong. 1819, 1820, doc. 2. p. 25.

† 1 vol. Ex. Papers, 1 sess. 16 Cong. doc. 2, p. 37.

‡ 1 vol. Ex. Papers, 1 sess. 16 Cong. doc. 2, p. 43.

§ 1 vol. Ex. Papers, 1 sess. 16 Cong. doc. 2. p. 48.



words of the treaty, Mr. Adams writes to the Chevalier De Onis on the 10th March, 1818, that it was distinctly understood that the grants to Alagon, Vargas, and Puñon Rostro, were all annulled by the treaty, as much as if they had been specifically named, and that they will be so held by the United States.\*

Mr. Adams, on the 14th July, 1819, submits to M. De Neuville the following observations on the eighth article: "M. De Neuville's particular attention is requested to the difference between the two projected articles, because it will recall particularly to his remembrance the point upon which the discussion concerning this article turned. By turning to the written memorandum, drawn up by M. De Neuville himself, of this discussion, he will perceive he has noted that M. De Onis insisted that this article could not be varied from what was contained in the Chevalier's project, as the object of the last clause therein was merely to save the honor and dignity of the sovereignty of his Catholic Majesty."

It was then observed by Mr. Adams, that the honor and dignity of his Catholic Majesty would be saved by recognising the grants prior to the 24th of January, as "valid to the same extent as they were binding on his Catholic Majesty;" and he agreed to accept the article as drawn by M. De Onis, with this explanation. (See M. De Neuville's memorandum.) It was on this occasion that M. De Neuville observed, that, if the grants prior to January 24, 1818, were confirmed only to the same extent that they were binding on the King of Spain, there were many *bona fide* grantees of long standing, in actual possession of their grants, and having actually made partial settlements upon them, but who had been prevented by the extraordinary circumstances in which Spain had been situated, and the revolutions in Europe, from fulfilling all the conditions of their grants; that it would be very harsh to leave these persons liable to a forfeiture, which might indeed, in rigor, be exacted from them, but which very certainly never would be if they had remained under the Spanish dominion. It will be remembered by M. De Neuville how earnestly he insisted upon this equitable suggestion, and how strongly he disclaimed for M. De Onis every wish or intention to cover, by a provision for such persons, any fraudulent grants. And it was then observed by M. De Neuville, that the date assumed, of 24th of January, 1818, was not sufficient for guarding against fraudulent grants, because they might be easily antedated. It was with reference to these suggestions of M. De Neuville, afterwards again strenuously urged by M. De Onis, that the article was finally modified as it now stands in the treaty, declaring all grants subsequent to 24th January, 1818, absolutely null, and those of prior date valid to the same extent only that they would have been binding on the king, but allowing to *bona fide* grantees in actual possession, and having commenced settlements, but who had been prevented by the late circumstances of the Spanish nation and the revolutions in Europe, from fulfilling *all* the conditions of their grants, time to *complete* them. It is needless to observe, that, as these incidents do not apply to either of the grants to Alagon, Puñon Rostro, or Vargas, neither of these grants is confirmed by the tenor of the article as it stands; and that it is perfectly immaterial, in that respect, whether they were dated before or after the 24th of January, 1818, it being admitted on all sides that these grants were not binding upon the king, conformably to the Spanish laws. The terms of the article accord precisely

\* 1 vol. Ex. Papers, 1 sess. 16 Cong. doc. 2, p. 63.

with the intentions of all the parties to the negotiation and the signature of the treaty. If the dates of the grants are subsequent to the 24th of January, 1818, they are annulled by the date; if prior to that date, they are null, because not included among the prior grants confirmed.”\*

From all these documents the clear inference is, that the great subject of anxiety with our negotiator was the large grants to Alagon, Vargas, and Puñon Rostro. It was against them almost alone that the article was directed. The American Government, indeed, at one time, proposed to carry the date back to 1802, by which means they would have excluded the claims of Forbes, Arredondo, and others, with whose existence there is *every reason to believe* they were perfectly well acquainted. But this pretension was speedily abandoned. If there appeared a distinct declaration on the part of the American Government that the sole object of the 8th article was to exclude the grants to Alagon, Puñon Rostro, and Vargas, such declaration, it is apprehended, would be conclusive. It could no longer be deemed just or honorable to apply the question ordinary and extraordinary to other grants dated before the 24th January, 1818, with a view of extorting from them by legal subtlety something which should debar their proprietors the benefits of that very article which was framed solely to admit them, and to exclude others. Yet it is respectfully submitted that no express admission of the fact could be stronger than the implication arising from this correspondence. If, however, an explicit avowal on the part of our Government will alone be received, we refer to the message of the President to Congress, in which he tells that body “it was the intention of the parties to annul these latter grants, and that clause was drawn for that express purpose, and none other.”†

May we not ask whether this is the sole purpose to which it is now sought to be applied, and how far is it consistent with justice and good faith to extend the effect of the clause in question beyond what either of the parties contemplated at the time of its adoption?

The application of the common law principle, that a grant may be absolutely void where the officer issuing it had no authority, is insisted on; and it is asserted that the royal governors of the Spanish colonies had no power to make sales or donations of the public lands, except in very limited quantities, and under numerous restrictions. An inquiry into the truth of this assertion will be attempted, according to the limited means within our power; and the more readily because of the intimations thrown out by this court in the cases of Soulard and Smith.‡

Every fair presumption is against these supposed limitations. Legal or constitutional restrictions upon the power of the king or his officers, according to our ideas of them, are inconsistent with the character of the Spanish monarchy. They are hardly comprehensible by a native of that country, and have been rejected, together with the constitutional monarchy, by the people of Spain. How is it possible to reconcile limitations of power with the fundamental maxim, “the will of the prince has the force of a law?”

Portions of the royal authority, as arbitrary as that of the king himself, were entrusted to the several governors of provinces, each of whom, within the limits of his own government, was the image of his sovereign, and, in

\* Ex. Papers, 1 sess. 16 Cong. pp. 68, 69.

† 1 vol. Ex. Papers, 1 sess. 16 Cong. 1819-'20, doc. 2, p. 5.

‡ 4 Peters' Reports.

practice at least, and in popular opinion also, absolute. The only restraints upon his acts were his instructions and accountability to the king; but the royal instructions, and the *residencia*, or account of his transactions, which the governor was obliged to give, were not properly legal limitations upon his power, but rather directions for the exercise of his discretion, and securities for his good behavior.

Every nation has its own manner of securing the fidelity of its agents. Free Governments are constructed upon the principle of entrusting as little power as possible, and providing against its abuse *preventively*, by all species of checks and limitations. Arbitrary ones proceed upon the principle of bestowing ample powers and extensive discretion, and guarding against their abuse by prompt and strict accountability and severe punishment. Both have been invented by mankind for purposes of mutual defence and common justice, but the pervading spirit of the one is PREVENTIVE, of the other VINDICATORY.

How absurd would it be, then, to apply the maxims of the one government to the acts of the other. As well might we judge the life of Pythagoras by the law of the New Testament, or the philosophy of Zoroaster by that of Newton, as subject the administration of a Spanish governor to the test of magna charta, the bill of rights, the habeas corpus act, or the principles of American constitutional law.

Even the laws of the Indies, obscure, perplexed, and sometimes even unintelligible as they are, hardly reached across the ocean, and the decline of the Spanish, like that of the Roman empire, was marked by the *obsoletism* of the distant prefects.

Nor were the offices of captain general, intendant, or sub-delegate, sinecures. Entrusted with the command and defence of remote and exposed possessions—often reduced to the greatest extremities for the want of money and supplies—neglected by the feeble government of the mother country—they were yet expected to guard the colony, and execute the most rigorous system of monopoly, amid greedy neighbors and an impoverished people. They were frequently obliged to create their own resources; and some idea of their difficulties, and the devotion and address which surmounted them, may be formed by remembering how long the able but cruel Morilla protracted a desperate warfare, amid every species of distress and destitution.

Their first duty was to preserve his Catholic Majesty's province, committed to their care; and if they did it, and could only do it by some invasions of the fisc, or dilapidations of the royal domain, does it lie with us to complain of their fidelity to him, and vitiate those titles which were devised from a law above all other—necessity?\*

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*Extract from an opinion of Chief Justice Marshall, in Percheman's case.—7 Peters' Rep.*

"Florida was a colony of Spain, the acquisition of which, by the United States, was extremely desirable. It was ceded by a treaty concluded between the two powers at Washington on the 22d day of February, 1819.

\* Vide White's Land Laws, 235, 7 vol. Ex. Doc. p. 2, 1824-'5. Also, MSS. Extracts from Col. McKee's correspondence. See, also, the letter of Gov. Chester to the Earl of Dartmouth—MSS. Letter-book, West Florida, 18th Nov. 1775, p. 34.

The 2d article contains the cession, and enumerates its objects. The 8th contains stipulations respecting the titles to lands in the ceded territory.

It may not be unworthy of remark, that it is very unusual, even in cases of conquest, for the conqueror to do more than to displace the sovereign, and assume dominion over the country. The modern usage of nations, which has become law, would be violated; that sense of justice and of right which is acknowledged and felt by the whole civilized world would be outraged, if private property should be generally confiscated, and private rights annulled. The people change their allegiance, their relation to their ancient sovereign is dissolved, but their relations to each other, and their rights of property, remain undisturbed. If this be the modern rule even in cases of conquest, who can doubt its application to the case of an amicable cession of territory? Had Florida changed its sovereign by an act containing no stipulation respecting the property of individuals, the right of property in all those who became subjects or citizens of the new government would have been unaffected by the change. It would have remained the same as under the ancient sovereign. The language of the 2d article conforms to this general principle:—"His Catholic Majesty cedes to the United States, in full property and sovereignty, all the territories which belong to him, situated to the eastward of the Mississippi, by the name of East and West Florida." A cession of territory is never understood to be a cession of the property belonging to its inhabitants. The king cedes that only which belonged to him. Lands he had previously granted were not his to cede. Neither party could so understand the cession. Neither party could consider itself as attempting a wrong to individuals condemned by the practice of the whole civilized world. The cession of a territory by its name, from one sovereign to another, conveying the compound idea of surrendering, at the same time, the lands and the people who inhabit them, would be necessarily understood to pass the sovereignty only, and not to interfere with private property. If this could be doubted, the doubt would be removed by the particular enumeration which follows:—"The adjacent islands dependent on said provinces, all public lots and squares, vacant lands, public edifices, fortifications, barracks, and other buildings which are not private property, archives and documents which relate directly to the property and sovereignty of the said provinces, are included in this article."

This special enumeration could not have been made, had the first clause of the article been supposed to pass, not only the objects thus enumerated, but private property also. The grant of buildings could not have been limited by the words "which are not private property," had private property been included in the cession of the territory.

This state of things ought to be kept in view when we construe the 8th article of the treaty, and the acts which have been passed by Congress for the ascertainment and adjustment of titles acquired under the Spanish Government. That article, in the English part of it, is in these words: "All the grants of land made before the 24th January, 1818, by his Catholic Majesty, or by his lawful authorities in the said territories, ceded by his Majesty to the United States, shall be ratified and confirmed to the persons in possession of the lands, to the same extent that the same grants would be valid if the territories had remained under the dominion of his Catholic Majesty."

This article is apparently introduced on the part of Spain, and must be intended to stipulate expressly for that security to private property which

the laws and usages of nations would, without express stipulation, have conferred. No construction which would impair that security further than its positive words require, would seem to be admissible. Without it, the titles of individuals would remain as valid under the new government as they were under the old, and those titles, so far at least as they were consummated, might be asserted in the courts of the United States, independently of this article.

The treaty was drawn up in the Spanish as well as in the English language. Both are originals, and were unquestionably intended by the parties to be identical. The Spanish has been translated, and we now understand that the article, as expressed in that language, is, that the grants "shall remain ratified and confirmed to the persons in possession of them to the same extent," &c.; thus conforming exactly to the universally received doctrine of the law of nations. If the English and the Spanish parts can, without violence, be made to agree, that construction which establishes this conformity ought to prevail. If, as we think must be admitted, the security of private property was intended by the parties, if this security would have been complete without the article, the United States could have no motive for insisting on the interposition of Government, in order to give validity to titles which, according to the usages of the civilized world, were already valid. No violence is done to the language of the treaty by a construction which conforms the English and Spanish to each other: although the words "shall be ratified and confirmed," are properly the words of contract stipulating for some future legislative act, they are not necessarily so. They may import that they "shall be ratified and confirmed" by force of the instrument itself. When we observe that in the counterpart of the same treaty, executed at the same time by the same parties, they are used in this sense, we think the construction proper, if not unavoidable.

In the case of *Foster vs. Elam*, 2 Pet. 253, this court considered these words as importing contracts. The Spanish part of the treaty was not then brought to our view, and we then supposed that there was no variance between them. We did not suppose that there was even a formal difference of expression in the same instrument, drawn up in the language of each party. Had this circumstance been known, we believe it would have produced the construction which we now give to the article.

This understanding of the article must enter into our construction of the acts of Congress on the subject.

The United States had acquired a territory containing near thirty millions of acres, of which about three millions had probably been granted to individuals. The demands of the Treasury, and the settlement of the territory, required that the vacant lands should be brought into the market, for which purpose the operations of the land office were to be extended into Florida. The necessity of distinguishing the vacant from the appropriated lands was obvious, and this could be effected only by adopting means to search out and ascertain pre-existing titles. This seems to have been the object of the first legislation of Congress.

On the 8th of May, 1822, an act was passed "for ascertaining claims and titles to land within the Territory of Florida."

The first section directs the appointment of commissioners, *for the purpose of ascertaining* the claims and titles to lands within the Territory of Florida, as acquired by the treaty of the 22d of February, 1819.

It would seem from the title of the act, and from this declaratory section, that the object for which these commissioners were appointed was the ascertainment of these claims and titles. That they constituted a board of inquiry, not a court exercising judicial power, and deciding finally on titles. By the act "for the establishment of a Territorial Government in Florida," previously passed at the same session, superior courts had been established in East and West Florida, whose jurisdiction extended to the trial of civil causes between individuals. These commissioners seem to have been appointed for the special purpose of procuring promptly, for Congress, that information which was required for the immediate operations of the land office. In pursuance of this idea, the 2d section directs that all the proceedings of the commissioners, the claims admitted, with those rejected, and the reason of their admission and rejection, be recorded in a well bound book, and forwarded to the Secretary of the Treasury, to be submitted to Congress. To this desire for immediate information we must ascribe the short duration of the board. Their session for East Florida was to terminate on the last of June in the succeeding year; but any claim not filed previous to the 31st of May in that year, to be void, and of none effect.

These provisions show the solicitude of Congress to obtain, with the utmost celerity, that information which ought to be preliminary to the sale of the public lands. The provision that claims not filed with the commissioners previous to the 30th of June, 1823, should be void, can mean only that they should be held so by the commissioners, and not allowed by them. Their power should not extend to claims filed afterwards. It is impossible to suppose that Congress intended to forfeit real titles not exhibited to their commissioners within so short a period.

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#### No. 2.

*Extract from the opinion of the Supreme Court in the case of Arredondo.*

"It became, then, all important to ascertain what was granted by what was excepted. The King of Spain was the grantor, the treaty was his deed; the exception was made by him, and its nature and effect depended on his intention, expressed by his words in reference to the thing granted, and the thing refused, and excepted in and by the grant. The Spanish version was in his words, and expressed his intention; and, though the American version showed the intention of this government to be different, we cannot adopt it as the rule by which to decide what was granted, what excepted, and what reserved: the rules of law are too clear to be mistaken, and too imperative to be disregarded by this court. We must be governed by the clearly expressed and manifest intention of the *grantor*, and not the *grantee in private*, *a fortiori*, in *public grants*. That we might not be mistaken in the intention or in the true meaning of Spanish words, two dictionaries were consulted, one of them printed in Madrid; and two translations were made of the 8th article, each by competent judges of Spanish, and both agreeing with each other, and the translation of each agreeing with the definition of the dictionaries. 'Quedaran,' in Spanish, correctly translated, means 'shall remain:' the verb '*quedar*,' in French, '*rester*;' Latin, '*manere*,' '*remanere*;' and English '*remain*,' in the present tense. In the English original the words are 'shall be,' words in the future. The

difference is all important as to all Spanish grants. If the words of the treaty were, that all the grants of land 'shall remain confirmed,' then the United States, by accepting the cession, could assert no claim to these lands thus expressly excepted. The proprietors could bring suits to recover them without any action of Congress, and any question arising would be purely a judicial one. 'Shall be ratified,' makes it necessary that there should be a law ratifying them, or authorizing a suit to be brought; otherwise the question would be a political one, not cognizable by this court, as was decided in *Foster and Elam vs. Nelson*.

"But, aside from this consideration, we find the words used in the Spanish sense as to the grants made after the 24th January, 1818, which are, by the same article in English, '*hereby declared and agreed to be null and void.*' The ratification is in Spanish and English. The Spanish words in the Spanish version are, '*quedado*' and '*quedan*,' in reference to the annulled grants; the English are, '*have remained*,' '*do remain.*' The principles of justice, and the rules of both law and equity, are too obvious not to require that, in deciding on the effect and legal operation of this article of the treaty by the declared and manifested intention to the King, the meaning of Spanish words should be the same in confirming as in annulling grants. A regard to the honor and justice of a great republic alike forbid the imputation of a desire that its legislation should be so construed, and its laws so administered, that the same word should refer to the future as to confirming, and to the present in annulling grants, in the same article of the same treaty.

"For these reasons, and in this connexion, we consider that the grants were confirmed and annulled, respectively, simultaneously with the ratification and confirmation of the treaty; and that, when the territory was ceded, the United States had no right in any of the lands embraced in the confirmed grants."

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No. 3.

FOREIGN OFFICE, DEPARTMENT OF ARCHIVES,

Paris, October 11, 1833.

SIR: I have the honor to enclose to you the documents which Mr. Mignet had caused to be prepared for you before his departure; and I shall feel obliged by your acknowledging their receipt.

I have the honor to be,

Sir, your obedient humble servant,

CTE. DE HAUTERIVE.

To Hon. JOSEPH M. WHITE.

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*Information relative to the limits of Louisiana, on the borders of the Floridas, communicated to Mr. White, member of the House of Representatives of the United States.*

At the peace of the 3d November, 1762, between France and England. France ceded by the 6th article of the preliminary treaty of the same day, ratified by the three powers, of the 12th, 13th, and 14th of the same month, part of Louisiana to England.

This article is expressed thus:

“ In order to establish the peace on a solid and durable foundation, and to prevent any pretext of dispute respecting the limits of the French and British territories on the continent of America, it is agreed, that in future the boundary between the possessions of his most Christian Majesty and those of his Britannic Majesty in this part of the world shall be irrevocably fixed, by a line drawn in the middle of the river Mississippi, from its source, unto the river Iberville, and thence by a line along the middle of that river, and of the lakes Maurepas and Ponchartrain, to the sea; and for this purpose his most Christian Majesty cedes and guarantees the cession to his Britannic Majesty of the river and port of Mobile, as well as all which his said Christian Majesty does or may possess on the left of the river Mississippi, with the exception of the city of New Orleans, and of the island on which it is situated, which shall still appertain to France; and it is clearly understood and agreed, that the navigation of the river Mississippi shall be equally free to the subjects of his Britannic Majesty as to those of France, both as respects the total breadth and length of the said river, from its source to the sea, and especially that part which is between the island of New Orleans and the right bank of the river, as well as the entrance and exit by its mouth.”

This article was confirmed by the 7th article of the definitive treaty of the 10th February, 1763, signed at Paris by the plenipotentiaries of the three powers, and to which Portugal acceded.

On the same day on which the preliminary treaty of the 3d November, 1762, was concluded, France ceded to Spain, by a secret act of cession, that part of Louisiana which she still possessed: as follows is the tenor of this act of cession:

“ His Christian Majesty, being firmly resolved to strengthen and perpetuate the bonds of intimate friendship which unite him to the Catholic King, his cousin, intends to act conformably in all and every respect with his Catholic Majesty, in a perfect uniformity of principles, as to the renown of each of their houses, and the reciprocal interest of their monarchies.

“ With this view, his most Christian Majesty, truly sensible of the sacrifices which his most Catholic Majesty has generously made to assist him in establishing peace, wishes, on this occasion, to give him proof of the lively interest which he takes in meeting his views and rendering service to his crown.

“ And to this effect his most Christian Majesty has authorized the Duke of Choiseul, his minister, to deliver in the most authentic form to the Marquis of Grimaldi, ambassador extraordinary of his Catholic Majesty, an act, by which his most Christian Majesty yields and cedes all property, totally, simply, and without any exception, in all the country known by the name of Louisiana, as well as New Orleans, and the island in which it is situated, to his Catholic Majesty and his successors in perpetuity.

“ But the Marquis of Grimaldi, not being sufficiently exactly informed of the intentions of his Catholic Majesty, does not feel himself authorized to accept the said cession otherwise than conditionally and *sub spe rati*, until the arrival of the orders of the king, his master, which, if they are conformable with the desires of his most Christian Majesty, as he hopes they may be, will be immediately followed by the formal and authentic act of cession in question, in which will be mentioned the suitable mode and time for the evacuation of Louisiana and New Orleans by the subjects of his most



Christian Majesty, and for the occupation of the said country and city by the subjects of his most Catholic Majesty.

"In faith whereof, we, the respective ministers, have signed the present preliminary act, and affixed to it the seal of our arms.

Given at Fontainebleau, November 3d, 1762.

[L. s.]

LE DUC DE CHOISEUL.

[L. s.]

LE MARQUIS OF GRIMALDI.

The King of Spain accepted this cession by an act of the 13th November, of the same year, but the delivery was delayed until the 21st April, 1764.

After that period, Louisiana, as possessed by France before 1762, became divided into two parts. The one which was ceded to England, and which extended to the east from the line of the Mississippi, of the river Iberville, and of the lakes Maurepas and Pontchartrain to *Rio Perdido*, formed Western Florida; that only which was ceded to Spain preserved the name of Louisiana.

In the war of 1779 Spain conquered Western Florida of England, which power ceded it to her by the 5th article of the Treaty of Versailles of the 3d September, 1783, abandoning also to her East Florida.

At the close of this treaty, Spain possessed both parts of ancient Louisiana; the one to the west of the line of the Mississippi, of the river of Iberville, of the lakes Maurepas and Pontchartrain, from the cession of France, the other to the east of that line from the part of England; the first in virtue of the act of cession of the 3d November, 1762, the second in virtue of the treaty of September 3d, 1783.

Such was the state of things in Vendimaire, an. 9, (September 1800,) at which time, when Spain ceded back Louisiana to France, the act of retrocession was preceded by protracted negotiations. From the year 4 (1796) the ambassador of the French Republic at Madrid, citizen Perignon, was instructed to sound the Spanish Government on this subject.

That Government appeared to enter into the views of France by seeking an increase of territory in Italy for the Duke of Parma. The price of this aggrandizement was to be the cession of Louisiana and Western Florida. The minister of foreign affairs, Delacroix, considered the negotiation sufficiently advanced in the 14th Messidor, (5th year Fr. Indep.) to write to General Bonaparte, that the Directoriat had sent full powers to citizen Perignon to conclude a treaty with the Spanish Government. "This treaty, he said, ought to have as basis the cession of Louisiana and of West Florida to the republic, upon the supposition that events permit the French Government to procure for the Duke of Parma an augmentation of territory, such as Romagna or any other part."

But this project did not succeed. Subsequently, in the year 8, General Berthier was constituted envoy extraordinary to Madrid, to resume the same negotiation.

In exchange for the aggrandizement of territory for the Infanta, Duke of Parma, he demanded, according to the express instructions of the Consular Government, the cession of Louisiana and the two Floridas. But to these propositions he did not find the Spanish Government disposed.

"The answer of the King (he said in his despatches of the 25th Fructidor, an. 8,) to the minister of foreign affairs of France was, that he would perform the promise which he had given for the retrocession of Louisiana, as it had been ceded by the treaty of 1763; that he would never

consent to cede the Floridas, and that he was surprised that, after having yielded that which was so long solicited, new demands should be made upon him." The endeavors of the French Government to obtain the Floridas were fruitless, and it accepted the cession of Louisiana alone, as proposed by the Spanish Government.

This was the basis of the treaty of the 9th Vendimaire, an. 9, (1st October, 1800). Article 3 of this treaty, relative to Louisiana, was conceived in these terms: "His most Catholic Majesty promises and engages, on his part, to retrocede to the French Republic, six months after the full and entire execution of the conditions and stipulations before mentioned, relative to his Royal Highness the Duke of Parma, the colony or province of Louisiana, with the same extent which it had when France possessed it, and such as it ought to be, according to the treaties entered into subsequently between Spain and other States."

The retrocession of Louisiana having been made in time of war, and General Berthier having written to his Government on the 25th Fructidor, an. 8, at the time of the negotiation, that the Spanish Minister, Mr. Urquejo, had *allowed him to understand that, at a general peace, the King might cede half of West Florida, situated between the left bank of the Mississippi and the river Mobile*. General Beurnonville was commissioned to this new negotiation after the peace of Amiens. As follows were the instructions given to this effect in Vendimaire, an. 11: "The most important affair with which you will occupy yourself is to facilitate this last delivery, which ought to take place before the end of the season, by obtaining from the Spanish Government, that it give to the Governor of Louisiana, if not already done, specific orders to deliver it to the captain general which the Consul sends there. . . . The retrocession made by Spain only extends from the east to the Mississippi; but the Secretary of State, M. Urquejo, had given hopes to General Bertrand, chargé of this negotiation, and who insisted on the cession of one of the Floridas, that, at the general peace, he did not doubt that the king would consent to cede all that part of the Floridas which extends to Mobile, if the Premier Consul asked for it.

"The difficulties which Spain afterwards threw in the way of completing the cession of Louisiana caused the French Government to think, hitherto, that the moment was not yet arrived to ask an extension of territory; but peace has placed France in such a favorable position, that it does not seem necessary to adjourn any longer the necessary steps to obtain the aggrandizement with which the minister of the King of Spain flattered the French chargé d' affaires. The part of Florida which you have to lay claim to, belonged to France before the peace of 1763. It is evident she wishes to reacquire this former possession, where there are, doubtless, a great number of French families."

General Beurnonville received full powers to negotiate the exchange of the two Floridas in return for the duchy of Parma, which was to be ceded by France to his Catholic Majesty, and to be added to the kingdom of Etruria. He even took with him a plan of a treaty, composed the 26th Vendimaire by the Premier Consul, and of which the following were the dispositions relative to this exchange:

"ART. 1. The duchy of Parma, acquired by France by the treaty of Aranjuez of the 3d Ventose, an. 9, (21st March, 1801,) are ceded to his Catholic Majesty, to be reunited to the kingdom of Etruria.

“ART. 2. The middle of the Po, from the northeast extremity of the department of Marengo to the confluence of the Lenza, and the middle of this latter river, from its source to its mouth, shall be the boundaries between the Italian Republic and the territory ceded by the preceding article. Their western limit shall be rectified in the most suitable manner to protect the respective frontiers, and to insure the efficacy of the custom-houses.

“ART. 3. The duchy and dependencies of Parma shall unreservedly follow the fate of the kingdom of Etruria, of which they become an integral part. They cannot be separated from it to become settled on any branch of the reigning family; and Spain will exercise in the same manner and in the same circumstances, the rights of property and of eventual succession which are guaranteed to it in the kingdom of Etruria by the 7th article of the treaty of Aranjuez, heretofore mentioned.

“ART. 4. Spain, in compensation for the advantages guaranteed to her by the present treaty, retrocedes to France the river and port of Mobile, and the territory which belonged to it before 1763, to the west of that river only, from the most northern point of the thirty-first degree of north latitude to the river of Iberville and the gulf of Mexico. Further, she cedes to France the other part of West Florida and all East Florida, with the rivers, lakes, ports, bays, isles, and straits, dependent on each several Territory, and extending to the north unto the line of demarcation traced in article 2 of the treaty of friendship, of limits, and of navigation, concluded the 27th October, 1795, between his Catholic Majesty and the United States of America.”

Conformably to his instructions, General Beurnonville negotiated during several months for the exchange of the Floridas for the duchy of Parma; but this new negotiation did not produce any result. Spain kept the Floridas, and the impending rupture of the treaty of Amiens induced the French Government to transfer Louisiana to the United States. This cession was effected by the treaty of the 30th April, 1803. By the 1st article of this treaty France ceded to the United States the Territory of Louisiana, as it was received of Spain in 1800. “As it is said in this article, that by the article 3 of the treaty concluded at St. Ildefonso the 9 Vendimaire, an. 9, (1st Oct. 1800,) between the Premier Consul of the French Republic and his Catholic Majesty, as follows, was agreed on:

“His Catholic Majesty promises and engages, on his part, to retrocede to the French Republic, six months after the full and entire execution of the conditions and stipulations before mentioned, relative to his Royal Highness the Duke of Parma, the colony or province of Louisiana, with the same extent which it has at present under the Spanish dominion, and which it had when France possessed it, and as it ought to be, according to the treaties passed subsequently between Spain and other powers.

And as, in consequence of the said treaty, and especially of the said article 3, the French Republic has an incontestible title to the domain, and possession of the said territory, the Premier Consul of the French Republic, wishing to give an especial mark of his friendship to the said United States, cedes to them, in the name of the French Republic, for ever, the full sovereignty of the said territory, with all its rights and appurtenances, as and in the same manner as they were acquired by the French Republic, in virtue of the foregoing treaty concluded with his Catholic Majesty. (Translated from the original English by Martens, Supplement, tome 3, page 466.)

The territory acquired by the United States shall not exceed the left bank of the Mississippi, and does not comprehend Western Florida.

In fact, France having only acquired from Spain, by the treaty of retrocession of 1800, that part of ancient Louisiana which she ceded to her by the secret act of 1762, could only cede to the United States in 1803 that which she had received in 1800.

If Western Florida, or that part of ancient Louisiana which extends from the left bank of the Mississippi to Rio Perdido, had been also ceded to France by Spain in 1800, the treaty of St. Ildefonso would have mentioned it, because France did expressly claim it in the negotiations preceding this treaty.

The French Government did not consider that it acquired more than the Spanish Government considered that it ceded, because, two years after the cession of Louisiana, it negotiated for the exchange of the Floridas for the duchy of Parma. It was therefore Louisiana, with the borders she had after 1762, which was ceded by France to Spain in 1800, and transferred by France to the United States in 1803.

The Federal Government itself considered this question in the same point of view; it did separate Western Florida from Louisiana, and it has recognised the rights of Spain to it; as follows are several proofs of this:

1st. In 1795, by article 2 of the treaty of the 27th October, between the United States and Spain, the Federal Government acknowledged that the limits of Western Florida began at the Mississippi, and did not mix it up with Louisiana.

2d. The 4th Ventose, an. 11, more than two years after the retrocession of Louisiana to France, and some months before its acquisition by the United States, Mr. Livingston, their minister plenipotentiary at Paris, maintained, in a note addressed to the Premier Consul, this distinction between West Florida and Louisiana, and appeared persuaded that Louisiana alone had been ceded to France. "If the officers, said he, empowered to take possession, have not express orders to respect the rights of navigation and of entrepot, which the United States claim, I must particularly solicit a treaty, which, in acknowledging the rights of the United States, shall explain the conditions on which Spain has ceded Louisiana to France:" if to all this, citizen consul, you would add voluntarily, and as a mark of your consideration, that in the case of the cession of the Floridas to France, the citizens of the United States shall enjoy the free passage of the rivers Mobile and Pensacola, with the right of entrepot at their mouths, this act, useful to the commerce of France, would be gratefully acknowledged by the Americans, and would much strengthen the bonds of friendship between the two allied nations.

3d. The 30th Floreal, an. 11, (19th May, 1803,) twenty days after the treaty of cession of Louisiana to the United States, Mr. Monroe, one of the plenipotentiaries of the Federal Government, and whose signature was affixed to the treaty, was so far from believing that ancient Louisiana, comprising actual Louisiana and West Florida, had been acquired by the United States, that he requested the good offices of the French Government with the Spanish Government, to negotiate the acquisition of the Floridas. "Citizen minister," (he addressed the Minister of Foreign Affairs in France) "as some months will elapse before we can receive the decision and commands of our Government respecting the treaty and conventions which we have had the honor to conclude with Mr. Marbois, under your ministry, I consider it my duty to pursue, in the interval, the remaining objects of my mission, which are now to be arranged with his Catholic Majesty the King

of Spain: with that view I propose to set out, as soon as circumstances will permit, to Madrid, which I flatter myself will be practicable in the course of the next week. In the happy conclusion of our negotiation with your Government, a sentiment which I am persuaded will be cherished by both nations of the result, Mr. Marbois promised, on the part of the First Consul, his friendly intercession and support *of our negotiation with his majesty for the Floridas*. Permit me to invite your attention to that subject, and to request that you will be so obliging as to furnish me such aid, either by instructions to your ambassador at the Court of Madrid, or in such other mode as may be deemed most suitable to the character of the powers interested, be best calculated to promote success in the object desired, and to manifest the very friendly disposition of the First Consul to the United States, of which I entertain the most perfect confidence, I beg you, citizen minister, to accept the assurance of my high consideration and esteem."

JAMES MONROE.

4th. Lastly, the 22d Feb., 1829, the Federal Government acknowledged the rights of Spain to West Florida, by accepting the two Floridas from the Spanish Government, by article 2 of the treaty signed at Washington, between the King of Spain and the United States. "His Catholic Majesty," says this article, "cedes to the United States, in full property and sovereignty, all the territories which belong to him, situated to the eastward of the Mississippi, known by the name of East and West Florida."

It is true that in the interval which elapsed between the two treaties of 1803 and 1819, the United States laid claim to West Florida in virtue of the treaty of 1803. But France, whose testimony was often appealed to by the Federal Government and the Spanish Government, on this question, acknowledged always the rights of Spain, and condemned the claims of the United States. As follows were the expressions of the Minister of Foreign Affairs of the Imperial Government respecting the interpretation of the treaty of 1803, in the instructions given the 1st Germinal an. 13 (1st April, 1805,) to Mr. Desfoyes, commissioner of commercial relations, at New Orleans. "Louisiana was ceded to the Americans as France received it from Spain; the rights of the new possessor are the same as those we acquired, and his Imperial Majesty, in declaring, conformably to the treaty, what was its extent and the bounds of his pretensions, thereby declares the extent of the pretensions the Americans have a right to elevate. The United States claim to have acquired with Louisiana a part of the Floridas, but this claim is not expressed in any treaty, and is contrary to all those which have been concluded. France, who ceded to Spain in 1763 only the territory situated to the west of the Mississippi and of the river Iberville, has only obtained from Spain in Vendemaire, an. 9, a retrocession, the extent of which is necessarily measured or bounded by the cession which she made. She did not cede in an. 11 any other territory to the United States: she did not acknowledge of the claims which they laid to the possession of part of the Floridas in virtue of the same treaty. His Imperial Majesty having authorized me to make this formal declaration to the minister plenipotentiaries of the Federal Government, it is in this sense that I have continually expressed myself to them, whether verbally or in my official notes. The court of Madrid has received the same declarations from his Imperial Majesty. You may therefore, sir, express yourself in the same sense on any occasion on which you may be consulted in the discussions of the United States and Spain, relative to the eastern limits of Louisiana."

The French Government expressed, continually, the same opinion, during the discussions between the United States and Spain, relative to the possession of Florida.

The aforementioned documents prove as follows: That in 1762, Louisiana was divided into two parts; the one situated on the east of the Mississippi was ceded to England, and became Western Florida; the other, situated on the west of the Mississippi, was ceded to Spain, and alone preserved the name of Louisiana.

That in 1800 Spain, in retroceding Louisiana to France, only gave up new Louisiana, limited by the left bank of the Mississippi, and not ancient Louisiana, extending to Rio Perdido, because she would not alienate to her West Florida, which comprehended that part of ancient Louisiana.

That in 1802 France, after having exchanged with Spain the kingdom of Etruria for Louisiana, proposed to exchange the duchy of Parma for Eastern and Western Floridas; but this negotiation proved fruitless.

That in 1803 France transferred to the United States that which she had received of Spain, that is, Louisiana only.

That in 1803 the Government of the United States did not consider that it acquired West Florida by acquiring Louisiana; for, immediately after the treaty of the 10 Floreal, an. 11, she desired to enter into a negotiation with Spain respecting the Floridas.

That in 1819 it recognised the rights of the Spanish Government to West Florida, by receiving it of her by a treaty.

That, therefore, whether according to the terms of treaties, or according to the uniform interpretation which has been given them, the limits of Louisiana, which extended before 1762 to Rio Perdido, have never extended, since that period, beyond the left bank of the Mississippi, and have been constantly formed by the line of this river, of the river of Iberville, of the lakes Maurepas and Pontchartrain, on the side of the Floridas.

§ Seal of the § Given at Paris, the 20th August, 1833, according to the ori-  
 § French Po- § ginal documents preserved in the Archives of Foreign Af-  
 § reign Office. § fairs of France; and the foregoing extracts are hereby certified  
 to be accurate.

For and by the authorization of the Minister, the Counsellor of State, Director of the Archives and Chancelery.

(Signed)

MIGNET.

The above signature accredited by the French minister in due form.

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No. 4.

*Preliminary and secret Treaty between the French Republic and his Catholic Majesty the King of Spain, relating to the aggrandizement of his Royal Highness the Infant Duke of Parma, in Italy, and to the recession of Louisiana.*

His Catholic Majesty having always manifested the most anxious desire to procure for his Royal Highness the Duke of Parma, an aggrandizement which might place him on a footing corresponding with his dignity; and the French Republic having long since given to his Catholic Majesty the King of Spain to understand the desire which they feel to recover possession o

the colony of Louisiana, both Governments having interchanged their views upon these two subjects of common interest, and circumstances permitting them to enter into engagements in this particular which, as far as it depends on them, may assure reciprocal satisfaction, have authorized for this purpose, that is to say, the French Republic, the citizen Alexander Berthier, general-in-chief; and his Catholic Majesty, Don Mariano Luis de Urquijo, chevalier of the order of Charles III. and of St. John of Jerusalem, counsellor of state, his envoy extraordinary and plenipotentiary, near the Batavian Republic, and his provisional first secretary of state; who, after having exchanged their powers, have agreed, saving the ratification, upon the following articles:

ARTICLE 1. The French Republic engages to procure for his Royal Highness the Infant Duke of Parma an augmentation of territory, which shall raise the population of his estates to one million of inhabitants, with the title of king, and all the rights annexed to the royal dignity; and to this effect the French Republic engages to obtain the consent of his majesty the emperor and king, and of the other states interested, so that his Royal Highness the Infant Duke of Parma may, without opposition, enter into possession of said territories at the time of the confirmation of the peace between the French Republic and his Imperial Majesty.

ARTICLE 2. The augmentation to be given to his Royal Highness the Duke of Parma may consist of Tuscany, in case the present negotiations of the French Government with his Imperial Majesty shall permit them to dispose of that country, or of the three Roman ecclesiastical provinces, or any other continental provinces of Italy, that may form a rounded estate.

ARTICLE 3. His Catholic Majesty promises and engages on his part to recede to the French Republic, six months after the full and entire execution of the conditions and stipulations herein expressed, relative to His Royal Highness the Duke of Parma, the colony or province of Louisiana, *with the same extent that it now has in the lands of Spain, and had while in the possession of France, and such as it ought to be in conformity with the treaties subsequently concluded between Spain and other States.*

ARTICLE 4. His Catholic Majesty will give the necessary orders for the occupation of Louisiana by France the moment the estates designed for his aggrandizement shall be placed in the hands of His Royal Highness the Duke of Parma. The French may, according to its convenience, defer the taking possession; and when this is to be done, the States directly or indirectly interested shall agree upon the ulterior conditions which their common interests, and that of their inhabitants, may demand.

ARTICLE 5. His Catholic Majesty engages to deliver to the French Republic, in the ports of Spain in Europe, one month after the execution of the stipulation with regard to the Duke of Parma, six ships of war, in good condition, of seventy-four guns, armed and equipped, and in a state to receive the French crews and supplies.

ARTICLE 6. The stipulations of the present treaty having no prejudicial object, but on the contrary preserving untouched the rights of every one, it is not to be presumed they can excite the suspicions of any power. But if the contrary should happen, and the result of their execution should be that the two estates are attacked or threatened, both powers engage to make common cause, as well to repel aggression, as also to take those conciliatory measures proper to maintain peace with all their neighbors.

ARTICLE 7. The obligations contained in the present treaty in nothing annul those which are expressed in the treaty of alliance signed at St. Ildefonso, on the 2d Fructidor, year 4 (18th August, 1796); on the contrary, they unite with new ties the interests of the two powers, and confirm the stipulations of the treaty of alliance in all the cases to which they can be applied.

ARTICLE 8. The ratifications of the present preliminary articles shall be completed and exchanged in the period of one month, or sooner if possible, counting from the date of the signing of the present treaty.

In faith of which, we, the undersigned ministers plenipotentiary of the French Republic and of His Catholic Majesty, by virtue of our respective powers, have signed the present preliminary articles, and have affixed our seals.

Done at St. Ildefonso, the 9th Vendimaire, 9th year of the French Republic, (1st October, 1800.)

(Signed)

(Signed)

ALEXANDER BERTHIER,  
MARIANO LUIS DE URQUIJO.

No. 5.

*Mr. Talleyrand to Mr. Monroe: dated*

PARIS, December 21, 1804.

SIR: I had the honor in Brumaire last, to inform Mr. Livingston that I would submit to the inspection of his Imperial Majesty the letters which he addressed to me, relative to the motives of Mr. Monroe's journey to Spain, and some discussions between the Court of Madrid and the United States.

Among the observations made on this subject by Messrs. Livingston and Monroe, his Imperial Majesty has been obliged to give particular attention to those bearing on the discussions, of which the object is peculiarly interesting to the French Government. He has perceived that he could not be a stranger to the examination of these discussions, since they grew out of the treaty by which France has ceded Louisiana to the United States; and his majesty has thought that an explanation, made with that fidelity which characterizes him, on the eastern boundaries of the ceded territory, would put an end to the differences to which the cession has given rise.

France, in giving up Louisiana to the United States, transferred to them all the right over that colony which she had acquired from Spain. She could not, nor did she wish to cede any other; and that no room might be left for doubt in this respect, she repeated, in her treaty of 30th April, 1803, the literal expressions of the treaty of St. Ildefonso, by which she had acquired that colony two years before.

Now, it was stipulated in her treaty of the year 1801, that the acquisition of Louisiana by France was a *retrocession*; that is to say, that Spain restored to France what she had received from her in 1762. At that period, she had received the territory bounded on the east by the Mississippi, the river Iberville, the lakes Maurapas and Pontchartrain, the same day France ceded to England, by the preliminaries of peace, all the territory to the eastward. Of this Spain had received no part, and could therefore give back none to France.

All the territory lying to the eastward of the Mississippi and the river Iberville, and south of the thirty-second degree of north latitude, bears the



name of Florida. It has been constantly designated in that way during the time that Spain held it; it bears the same name in the treaty of limits between Spain and the United States, and, in different notes of Mr. Livingston, of a later date than the treaty of retrocession, in which the name of Louisiana is given to the territory on the west side of the Mississippi, of Florida to that on the east side of it. According to this designation, thus consecrated by time, and even prior to the period when Spain began to possess the whole territory between the thirty-first degree, the Mississippi, and the sea, this country ought, in good faith and justice, to be distinguished from Louisiana.

Your excellency knows, that before the preliminaries of 1762, confirmed by the treaty of 1763, the French possessions situated near the Mississippi extended as far from the east of this river, towards the Ohio and the Illinois, as in the quarters of the Mobile; and you must think it as unnatural, after all the changes of sovereignty which that part of America has undergone, to give the name of Louisiana to the district of Mobile as to the territory more to the north, on the same bank of the river which formerly belonged to France.

These observations surely will be sufficient to dispel every kind of doubt with regard to the retrocession made by Spain to France in the month of Vendimaire, year 9. It was under this impression that the French and the Spanish plenipotentiaries negotiated; and it was under this impression that I have since had occasion to give the necessary explanations when a project was formed to take possession of it. I have laid before his Imperial Majesty the negotiations of Madrid, which preceded the treaty of 1801; and his majesty is convinced that, during the whole course of these negotiations, the Spanish Government has constantly refused to cede any part of the Floridas, even from the Mississippi to the Mobile.

His Imperial Majesty has moreover authorized me to declare to you, that at the beginning of the year 11, General Beurnonville was charged to open a new negotiation with Spain for the acquisition of the Floridas. This project, which has not been followed by any treaty, is an evident proof that France had not acquired by the treaty retroceding Louisiana the country east of the Mississippi.

The candor of these observations proves to you, sir, how much value his majesty attaches to the maintenance of a good understanding between two powers, to whom France is united by connexions so intimate and so numerous. His majesty, called upon to give explanations on a question which interested France, directly persuades himself that they will leave no ground of misunderstanding between the United States and Spain; and that these two powers, animated as they ought to be by the sentiments of friendship, which their vicinity and their position renders so necessary, will be able to agree with the same facility on the other subjects of their discussion.

This result his Imperial Majesty will learn with real interest. He saw with pain the United States commence their differences with Spain in an unusual manner, and conduct themselves towards the Floridas by acts of violence; which, not being founded in right, could have no other effect but to injure its lawful owners. Such an aggression gave the more surprise to his majesty, because the United States seemed in this measure to avail themselves of their treaty with France as an authority for their proceeding; and because he could scarcely reconcile with the just opinion which he

entertains of the wisdom and fidelity of the Federal Government, a course of proceeding which nothing can authorize towards a power which has long occupied, and still occupies, one of the first ranks in Europe.

But the Federal Government having entered the path of negotiation, and the question which divided the two powers being cleared up, there is reason to hope that they will easily agree on the other points; and this his majesty, from the sincere interest which he feels for the equal prosperity of the two nations, ardently desires.

Accept, sir, &c.,

CH. MAN. TALLEYRAND.

No. 6.

*Extract from the royal order of the King of Spain for the delivery of the Province of Louisiana to the French Republic, dated Barcelona, October 15, 1802.*

Don Carlos, by the grace of God King of Castile, Leon, Aragon, of the Two-Sicilies, of Jerusalem, Navarre, Grenada, Toledo, Valencia, Galicia, Majorca, Minorca, Seville, Sardinia, Cordova, Corsica, Murcia, Jaen, of the Algarves, Algesiras, Gibraltar, of the Canary Islands, of the East and West Indies, of the Islands and Continent of the Ocean, Archduke of Austria, Duke of Burgundy, of Brabant and Milan, Count of Apsburg, Flanders, Tyrol and Barcelona; Lord of Biscay and Molina, &c.

Whereas, I have judged it proper to retrocede to the French Republic the colony and province of Louisiana, I command you, as soon as these presents are exhibited to you by General Victor, or any other officer duly authorized by said republic to receive the same, to put him in possession of the colony of Louisiana and its dependencies, together with the city and island of New Orleans, with the same limits it has at present, which it had whilst it belonged to France, and at the time she ceded it to my royal crown, and such as it ought to be found after the treaties successfully concluded between my States and those of other powers, in order that henceforth the same may belong to said republic, and that she may cause it to be administered and governed by her own officers and governors, as her own possession, without any exception whatever.

No. 7.

*Act of Delivery of the Province of Louisiana by Spain to France.*

The undersigned, citizen Pierre Clement Laussat, colonial prefect, commissioner on the part of the French Government, to receive possession in the name of the French Republic, of the colony or province of Louisiana, from the hands of the officers and other agents of his Catholic Majesty, agreeably to the full powers which he has received, in the name of the French people, from citizen Bonaparte, First Consul, under date of the 17th Prairial, year 11, (6th June, 1803,) countersigned by Hugues Maret, secretary of state, and by his excellency Decres, minister of marine and of the colonies, and recently delivered in person to the commissioners of his said Catholic Majesty, together with the royal order, dated from Barcelona, 15th October, 1802.

And the said commissioners of his Catholic Majesty, Don Manuel de Salcedo, brigadier in the king's armies, military and political governor of the provinces of Louisiana and West Florida, inspector of the veteran troops and militia of said provinces, royal vice patron, subdelegate, judge of the superintendence of the post-office department, &c., and Don Sebastian Calvo de la Puerta, Y. O'Farrell, Marquis of Casa Calvo, knight of the order of St. James, brigadier in the king's armies, and colonel of the infantry regiment of the Havana, appointed commissioner of his Catholic Majesty, for the delivery of this province to the French Republic, according to the royal order of the 18th Feb., 1803:

Certify by these presents, that, on this eighth day of Frimaire, in the twelfth year of the French Republic, and thirtieth November, 1803, having assembled in the hall of the hotel of the city of New Orleans, accompanied on either part by the chiefs and officers of the armies of land and sea, the secular and ecclesiastical cabildo, the administration of finances of the king of Spain, the civil administration, and by other distinguished persons of their respective nations, said citizen Laussat delivered to the said commissioners of his Catholic Majesty the abovementioned full powers from citizen Bonaparte, First Consul of the French Republic; and immediately after, the said Manuel de Salcedo and the Marquis of Casa Calvo declared that, by virtue of, and in conformity to the terms of the order of the king of Spain, dated from Barcelona, the 15th October, 1802, and countersigned by Don Pedro Cevallos, first secretary and counsellor of state, they, from that moment, did put the said French commissioner, citizen Laussat, in possession of the colony of Louisiana and its dependencies, as also of the city and island of New Orleans, with the same extent which they have on this day, and which they had while in the hands of France, when she ceded the same to the royal crown of Spain, and such as they ought to have been since the treaties successively concluded between the States of his Catholic Majesty and those of other powers, in order that the same may henceforth belong to the French Republic, and be governed and administered by its officers or governors, in such manner as will best suit its interests; and they have, accordingly, solemnly delivered to him the keys of this place, declaring that they absolve from the oath of fidelity to his said majesty, all such inhabitants as may choose to continue in the service or dependence of the French Republic.

And to the end that the same may forever hereafter appear by this solemn act, the undersigned have signed these presents in the French and Spanish languages, have hereto affixed their seals, and caused the same to be countersigned by the secretaries of the respective commissions, the day, month, and year above written.

LAUSSAT.

By the colonial prefect and commissioner on the part of the French Government.

DAUGEROT, *Secretary to the Commission.*

MANUEL DE SALCEDO.

EL MARQUEZ DE CASA CALVO.

ANDRES LOPEZ ARMISTO,

*So del Gobo. y de la Comm'on.*

Below is written:

Deposited in the archives of the city hall of this commune, New Orleans, the 6th Ariose, year 12 of the French Republic, and 28th December, A. D. 1803.

LAUSSAT.

By the colonial prefect and commissioner on the part of the French Government.

DAUGEROT,

*Secretary of the Commission.*

No. 8.

*Proclamation of Spanish Commissioners.*

Don Manuel Salcedo, brigadier in the royal armies, military and political Governor of the provinces of Louisiana and West Florida, Inspector of the veteran troops and militia of the same, Royal Vice Patron, Substitute Judge of the General Superintendence of Post Offices, &c.; and Don Sebastian Calvo de la Puerta y O'Farrill, Marquis of Casa Calvo, Knight of the Order of Santiago, Brigadier in the royal armies, and Colonel of the infantry regiment stationed at Havana; Commissioners on the part of his Majesty for delivering this province to the French republic.

We make it known to all the vassals of the king, our master, of all classes and conditions whatsoever, that his Majesty has resolved to make a retrocession of the province of Louisiana, for the mutual satisfaction of both powers; and continuing to give the same proofs of protection and affection which the inhabitants of this province have always received, he has thought fit to settle, among other things, certain points, which we deem it our duty publicly to make known for the particular government and disposition of all whom it may concern:

1. His majesty, in consideration of the obligations imposed by the treaties, and wishing to avoid the differences which might arise, has been pleased to resolve, that the delivery of the colony and island of New Orleans, which is to be made to General Victor, or other officer lawfully authorized by the Government of the French republic, shall be made in the same manner that it was ceded by France to his majesty, by virtue of which the limits of both shores of the river St. Louis or Mississippi shall remain as irrevocably fixed by the seventh article of the definitive treaty of peace, concluded at Paris on the 10th February, 1763; and consequently the settlements from the river Manshack or Iberville, to the line which divides the American territory from the dominions of the king, shall remain in the possession of Spain, and annexed to West Florida.

No. 9.

*Extract of a letter from Don Jose Pizarro, to Mr. Erving, Minister in Spain, dated Palace, August 17, 1817.*

“ Besides this, posterior to the year 1805, the extraordinary event has occurred of his Majesty's having been unexpectedly deprived in the year 1810, during his captivity, of the pacific possession, in which he was, of the

part of west Florida which is between the river Iberville, the lakes Maurepas, Pontchartrain, and Bourne, on the one side, and the river Perdido on the other. When the indisputable property of his majesty in the said territory was demonstrated, it was proved that Spain did not acquire it of France in 1763; that she received it of England in 1783, by a solemn treaty; that it was not and could not be comprehended in the "*retrocession of Louisiana*," made to France in the year 1800; that the Government of France "*has declared so officially*," and in the most solemn manner, as well to Spain as the United States; that the 5th article of the treaty of 1778, between France and the United States, opposes itself expressly to the *acquisition of France* (though she had attempted it) of said territory from Spain, in 1800; that the royal cedula of his majesty, issued in Barcelona, on the 15th of October, 1802, for the delivery of Louisiana, (which royal cedula was in the hands of the French Government before the United States thought of acquiring the colony,) did not contemplate the delivery of territory east of the Mississippi than that of "*the island of New Orleans*."

To these grounds, which have established, and so establish in the clearest manner, the property of his majesty in the said territory, may be added those of his pacific possession without interruption. The delivery of Louisiana took place without the least idea having occurred to the French commissioners who received it of his majesty, for the purpose of delivering it to the United States, of aspiring to the possession of the territory between the Iberville and the Perdido, Spain continued, in the years following the delivery, exercising over it all her authority, and the United States respected this possession; a certain custom-house regulation of the United States in the year 1804, which seemed to contain some expressions susceptible of an equivocal meaning as to the rights of his majesty in the territory of Mobile, were reclaimed against on the part of the king, and the United States agreed to give a satisfactory and honorable explanation as to the said expressions. Whatever might be then, in that state of things, the pretension of right which might be formed against it, it did not appear to conform to the principle universally acknowledged to enforce that pretension\* *by means of acts*, and in truth it was a painful duty for the faithful ministers of his majesty, on his return from his captivity, to explain to him by what means and circumstances he had been deprived of the peaceful possession of the greater part of West Florida, without war, or any stipulation which could authorize having preceded it.

The king, attributing this extraordinary event to the circumstances, also extraordinary, of the epoch which had intervened, flattered himself that the United States would not defer placing things in the state which they were in at the time he left his dominions, and the invasion of the peninsula by Bonaparte. The glory, and even the interests of the United States might equally incline them to this restitution; for a recent and costly experience has made the world see that there are no acquisitions of territory, however extensive, which can compensate the advantages to result from the reputation which those governments acquire who regulate their operations by principles conservatory of order and justice.

With these ideas, the king directed his minister at Washington, that before he entered into the discussions which had remained pending, he should

\* NOTE.—*Vias do hecho* is French phraseology, *voie de fait*es.

solicit the restoration of affairs in the state in which they were at the time of his absenting himself. This preliminary step appeared correspondent to the decorum of his majesty, and the United States could not fail to acknowledge it to be so; it being very certain that the delicate honor of the American Government would not consent, in a similar case, to enter into other negotiations, finding itself inquired in the pacific possession of even one mile of its acknowledged territory, without first soliciting and obtaining the due restoration.

Notwithstanding this, and the answer of the Secretary of State of 19th January, 1816, is far from containing the satisfaction and restoration which Spain had reason to expect, his majesty, to give unequivocal proofs of his moderation, and of his friendly dispositions towards the United States, without renouncing, as he does in no way renounce, nor will renounce, unless in the case of some compromise, the right of property and possession which he has in the said territory, has judged fit not to insist on his demand for the present, in the hope that this point, though in its nature it ought to be preliminary, may enter into the general arrangement with the others; but your penetration will acknowledge readily, that on this essential point, as in others, the state of the question is not what it was in the year 1805, new occurrences of such importance having taken place since that period."

In the treaty proposed by Don Jose Pizarro, in 1817, with the United States, the following articles are to be inserted as the basis, viz:

"6th. His Catholic Majesty, master of Florida, East or West, in all the extension in which he received them from England by the treaty of 1783, and which they had in possession of Great Britain before said treaty, will be willing, for his part, to cede them, with the same extension, to the United States of America, in full property and perpetual sovereignty, provided that the United States are equally disposed on their part to cede, in the same form to his Catholic Majesty, that part of Louisiana which is situated to the west of the Mississippi, and is the territory which lies between the said river and the well known limit which now separates, and has separated Louisiana when France possessed it before the year 1764, and even before the death of the King of Spain, Charles II., from the Spanish province called Texas; so that, after these reciprocal cessions are verified, the course of the river Mississippi, from its source to where it discharges into the sea, will be the only limit of the dominions of his Catholic Majesty, and those of the United States; and though the king could wish, that in the most southern part of said river, where it opens different branches or channels before discharging itself into the sea, the separating line might be continued through the principal channel which passes by New Orleans; yet his majesty, desiring, in all that depends on him, to facilitate the arrangement, it may be agreed and stipulated, that the dividing line, in the part where the Mississippi separates itself and flows into different channels, shall be established towards the western part, placing it in the middle of the arm or channel called *La Fourche*, to where it discharges itself into the sea, all the delta, or ground alluvion, situated on the east of said channel *La Fourche*, remaining in the power of the United States.

"7th. As by the 8th article of the treaty of Utrecht it is declared that for the future all cessions, sales, or alienations of the Spanish territory in

America, shall be null and of no value, Spain herself remaining without powers to make them, and England obliging herself to aid the Spaniards, that the limits of their dominions in America should be established and maintained as they were before the decease of King Charles II.; and as the part of the Floridas situated on the east of the river Perdido was a Spanish possession at the time of the decease of the said King Charles II., and, therefore, is comprehended in the said 8th article of the treaty of Utrecht, it is not in the power of his Catholic Majesty to effectuate, by himself, the cession mentioned in the preceding article, without the previous consent and agreement of the power or powers interested in the fulfilment of the said treaty of Utrecht, for which reason it will be indispensable, in case that the United States shall accede to the proposed arrangement, to solicit and obtain the said consent of the power or powers interested, and the derogation, and for this sole purpose of the said article of the treaty of Utrecht, which, in all other respects, shall hereafter remain in full force."

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No. 10.

*Note of General Armstrong, in a pamphlet entitled a "Review of Adams's Eulogium upon James Monroe."*

"Mr. Adams asserts that much ability was shown in this abortive negotiation by Mr. Monroe and his colleague Mr. P. Does he forget, or has he overlooked the *admission* to be found in Mr. Monroe's preliminary letter to Talleyrand, "*that we had bought from France only what France had bought from Spain?*" By this admission, the question became one, not of construction, but of fact. It was no longer what the terms of the treaty of St. Ildefonso would warrant us in demanding, but how those terms were understood by the parties to that instrument. Spain denied that she had ceded West Florida to France, and France denied that she had either sold, or intended to sell to us, more than she had bought from Spain. Such was the *Pons Asinorum* which stopped the progress of Mr. Monroe and his colleague at Madrid. By the way, the construction given to the treaty of St. Ildefonso, on which the United States so long and pertinaciously relied, and which Mr. Madison's ingenuity made so plausible, was a suggestion of Mr. Livingston's, submitted by him to his Government, and adopted by it, but to which Mr. M. *for some time refused his assent*. See Mr. L.'s official correspondence with Mr. Madison in the spring of 1803."













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